



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1996

Ms. Elizabeth C. Lara
Legal Assistant
Legal and Compliance MC-110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-1606

Dear Ms Lara:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40678.

The Texas Department of Insurance ("TDI") received a request for certain types of information, including telephone messages to or from certain employees. TDI asserts that some of the information consists of "personal notes" that are not subject to chapter 552. TDI also argues that certain information is excepted from disclosure pursuant to sections 552.103, 552.107(1), 552.111, and 552.117. You have submitted marked representative samples of the information at issue to this office for review.¹

Some of the information responsive to the requests includes telephone message slips and handwritten notes that you contend are "personal notes made and kept solely for the employee's own informational purposes." You submitted these documents in a bundle titled "telephone message slips and personal notes." You state that these records are not kept in agency files and are not generally accessible to other TDI employees.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Most of the telephone message slips and the other handwritten notes appear to be work-related documents. In Open Records Decision No. 635 (1995) at 3, this office stated that records that relate to a governmental body's official business are subject to chapter 552 "regardless of whether an individual member of a governmental body, the governmental body's administrative offices, or the custodian of records hold the records." Work-related documents are subject to chapter 552 even if kept by individual employees and not made accessible to other employees.

Some of the telephone message slips contain notations about personal telephone calls rather than work-related telephone calls. Our review of the telephone message slips indicates that messages were taken by TDI employees during work hours, apparently as part of their jobs, and that the calls were made to TDI numbers. These records also appear to be subject to chapter 552 of the Government Code. See Open Records Decision No. 635 (1995) at 6-7 (use of state resources, such as public employee time, is one factor in determining whether information is public or private).

You assert that some of the telephone message slips and other handwritten notes are excepted from disclosure pursuant to sections 552.103, 552.107(1), and 552.117. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. See Open Records Decision No. 574 (1990). Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members.

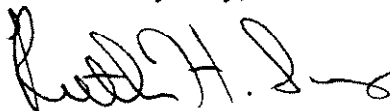
We agree that the information you have marked as excepted from disclosure in the bundle marked "telephone message slips and personal notes" may be withheld from disclosure.

You also submitted to this office a collection of documents marked as "drafts" that you contend are excepted from disclosure pursuant to section 552.111. Section 552.111 excepts from disclosure inter-agency or intra-agency communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. See *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ); Open Records Decision No. 615 (1993) at 5. Section 552.111 excepts from required public disclosure preliminary drafts of documents related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final documents. See Open Records Decision No. 559 (1990). We agree that the documents marked as "drafts" may be withheld from disclosure.

TDI also contends that other documents submitted to this office are excepted from disclosure pursuant to sections 552.107(1) and 552.111. We have marked those documents to indicate what information may be withheld from disclosure pursuant to sections 552.107(1) and 552.111. The remaining information must be disclosed.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 40678

Enclosures: Marked documents
Open Records Decision No. 647 (1996)

cc: Mr. Leonard H. Dougal
Small, Craig & Werkenthin
100 Congress Avenue, Suite 1100
Austin, Texas 78701-4099
(w/ enclosure Open Records Decision No. 647 (1996))

²We note that you argued that some of the handwritten notes are attorney-work product which should be excepted from disclosure. We note that the handwritten notes at issue may be withheld on the basis of the other exceptions you asserted. However, we have enclosed a copy of Open Records Decision No. 647 (1996) that addresses the attorney work product exception under section 552.111 of the Government Code.